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# RECOMMENDATIONS FOR THE BOARD OF REGISTERED NURSING (BRN)

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## DRAFT RECOMMENDATIONS OF THE DEPARTMENT OF CONSUMER AFFAIRS

**NOTE:** The Department provided the following recommendations in draft form:

**ISSUE #1.** (CONTINUE REGULATION OF THE PROFESSION AND THE BOARD?)  
Should the licensing and regulation of nursing profession be continued, and be regulated by an independent board rather than by a bureau under the Department?

**Recommendation #1:** *The Department recommends that the nursing profession should continue to be regulated through the BRN in order to protect the interests of consumers and be reviewed once again in four years.*

**Comments:** The health and safety of consumers are protected by a well-regulated nursing profession. The BRN has consistently shown itself to be an effective regulatory body, and should be continued with a four-year extension of the BRN's sunset date.

**ISSUE #2:** (REDUCE THE TIME IT TAKES TO PROCESS COMPLAINTS?) It is taking on average about three years from the time a complaint is filed till final disciplinary action is taken against the licensee.

**Recommendation #2:** *The Department recommends the BRN develop a plan to reduce the time it takes to process complaints.*

**Comments:** The Department notes, however, that unlike other regulatory boards, the majority of complaints received by the BRN are not received from consumers. Rather, a substantial portion of complaints received are from other licensees or professional groups – in 2001/02, there were twice as many complaints from other licensees than from the public. Given the nature and source of these nursing complaints, it may be reasonable for investigation of these complaints to take longer than more traditional consumer complaints.

The average number of days from receipt of complaint to final disposition of the case ranged from 1,073 days in fiscal year 1997/98, to 1,237 days in 1998/99, and was 1,191 in 2001/02. This means that it is taking on average about three years to pursue disciplinary action against a registered nurse. The Board indicates that the most dramatic and persistent increase in time frames occurred in the investigation phase.

**ISSUE #3: (CHANGE THE COMPOSITION OF THE BOARD?)** The current composition of the Board is a 2 to 1 majority of professional members versus public member, with 5 nurses, 1 physician and 3 public members. Almost all health related consumer boards have no more than a simple majority of professional members.

**Recommendation #3:** *The Department recommends replacing the physician member with a public member.*

**Comments:** The Department believes that public participation on regulatory boards ensures a balanced approach to decision-making, and enhances public protection. In recent years, public members have been added to the Accountancy, Contractors, Pharmacy, Podiatry, Psychology, Respiratory Care, and Veterinary Medical Boards through sunset review legislation. Replacing the physician member with a public member would provide the BRN with five registered nurses and four public members. This new composition would provide more consumer representation while continuing to maintain the expertise needed for technical regulatory and enforcement issues.

**ISSUE #4: (ONE BOARD MEMBER TO BE ADVANCE PRACTICE NURSE?)** The Board has no statutory requirement that at least one nursing member of the Board be a registered nurse in advanced practice.

**Recommendation #4:** *The Department recommends that one of the professional members of the BRN be required to be an advanced practice nurse.*

**Comments:** Advanced practice nurses generally refer to four types of nurses: nurse practitioners, nurse anesthetists, nurse-midwives, and clinical nurse specialists. The Department believes that designating one nursing board member as an advanced practice nurse would better reflect the current nursing practice in California, in which an increasing number of patients are being treated by an advanced practice nurse. While the Department notes that a current member of the BRN is an advanced practice nurse, ensuring this continued representation in statute is advisable.

**ISSUE #5: (BRN CONTINUE TO SURVEY & ANALYZE PRACTICE OF NURSING?)** The BRN is involved in the collection of information regarding the practice of registered nursing as required by Section 2786 of the Business and Professions Code. The JLSRC questioned whether the Board should continue to be responsible for collecting this information and the extent to which it should collect this data.

**Recommendation #5:** *The Department recommends that the BRN continue to perform its analysis and survey of the registered nursing practice.*

**Comments:** As the JLSRC noted, the last survey of the nursing profession by the BRN was conducted in 1997. The resulting document was invaluable to researchers and policy makers who look at trends in the nursing workforce to make important decisions about where to target efforts at relieving workforce shortage issues. While the federal government does a similar

survey every four years, researchers in California indicate that it often takes two years or more for the results of these studies to be released. Further, because it is a national survey, the sample size of California nurses represented in these surveys is smaller than the surveys conducted by the BRN, and are of limited use in evaluating nurse workforce conditions in specific geographic regions of California. Based on numerous projections, California will be dealing with a nursing shortage for years to come. Having accurate workforce data about nurses in California, such as which practice areas and geographic regions are in greatest need, will provide policymakers and administrators with information they will need to address this shortage. The BRN has a proven track record in conducting thorough surveys of the nursing profession in California in 1990, 1993 and 1997. The Legislature reaffirmed the importance of these studies in 2002 by requiring the BRN to conduct a nurse workforce study every two years, and the BRN has funding to complete the initial survey pursuant to this new law.

**ISSUE #6: (WORK WITH K-12 SCHOOLS TO ASSURE APPROPRIATE NURSING CARE?)** The Board is concerned that school personnel may be providing nursing services that in other settings would be prohibited.

**Recommendation #6:** *The Department recommends that the BRN continue its efforts to ensure that the health and safety of pupils are not placed at risk due to receiving health care services by unlicensed school personnel.*

**Comments:** The Department is mindful of the predicament facing schools and families with children needing medical assistance. The number of school nurses available to provide health care services to children while attending school is reportedly inadequate to meet the needs of many school children. However, the mandate of the Department, and of the BRN is consumer protection, and part of this mandate is a responsibility to prevent unlicensed activity. Pupils are arguably placed at risk when unlicensed personnel provide medical treatments. The BRN should continue working with the education community to protect the health and safety of children by ensuring that health care services are provided by properly licensed personnel.

**ISSUE #7: (REVIEW DECLINING PASS RATE OF NATIONAL EXAM?)** The Board has been experiencing declining pass rates on its national licensure examination (NCLEX-RN) for candidates applying for licensure.

**Recommendation #7:** *The Department recommends that the BRN include the Chief of the Department's Office of Examination Resources on the NCLEX-RN Task Force, should the Task Force be reconvened.*

**Comments:** The Department commends the BRN for its efforts, in the appointment of an NCLEX-RN Task Force, to address the declining pass rate on its national licensure examination. This Task Force completed its work and issued a report with specific recommendations to improve the NCLEX-RN pass rate. The BRN indicates, however, that it is considering reconvening the Task Force within the next two years to resurvey prelicensure programs to identify "best practices" used by programs to maintain and improve pass rates during the last 3 years. Should this Task Force be reconvened, the Department recommends that the BRN utilize

the expertise of the Department's Office of Examination Resources by appointing the Chief of this office to the Task Force.

**ISSUE #8: (PLACE RNs ON INACTIVE STATUS IF CE IS NOT COMPLETED?)**

**Not all nurses are audited for compliance with continuing education (CE) requirements, however for those audited and found in non-compliance, they could be required to stop practicing and placed on inactive status until they fulfill the CE requirement.**

**Recommendation #8:** *The Department recommends that registered nurses not be required to stop practicing due solely to the failure to meet continuing education requirements.*

**Comments:** BRN records show that the number of nurses whose licenses were placed on inactive status due to failure to complete continuing education requirements is very small. However, the Department concurs with the JLSRC that the BRN should have discretion in determining whether a failure to meet continuing education requirements should result in placing a nurse's license on inactive status, as long as registered nurses remedy the continuing education deficiency in a reasonable period of time. In general, the Department believes that continuing education for the various professions ensures maintenance of contemporary skills and knowledge. This is particularly important in the medical profession where new technologies and techniques are always emerging.

**ISSUE #9: (IMPROVE COST RECOVERY EFFORTS?) The Board still has difficulty in collecting cost recovery.**

**Recommendation #9:** *The Department recommends that the BRN improve the collection of cost recovery awards.*

**Comments:** The Department recommends that the BRN should review its collection procedures and those utilized by other regulatory boards in an effort to improve the collection of cost recovery awards ordered by administrative law judges upon completion of disciplinary cases.

## **ADDITIONAL JOINT COMMITTEE STAFF RECOMMENDATIONS**

**ISSUE #10: (CLARIFY AUTHORITY OF BRN TO ADOPT REGULATIONS REGARDING THE PRACTICE OF NURSING?)** There may be situations in which the BRN should adopt regulations to more clearly define the scope of practice for nurses and to clarify that it is the BRN that has sole responsibility to define or interpret the practice of nursing, unless otherwise permitted by law.

**Recommendation #10:** *The BRN should assure that any “advisory opinions” or statements issued by the Board regarding the scope of practice for nurses would not be considered as underground rule making, and should consider adopting regulations when there is serious controversy regarding any opinions or statements issued by the BRN regarding the scope of practice for nurses. Also, it should be clarified that no other agency other than the BRN should have responsibility to define or interpret the practice of nursing, unless otherwise permitted by law.*

**Comments:** There have been a number of instances in which the BRN adopted advisory opinions or policy statements regarding the practice of advanced nursing in this state rather than adopting regulations to interpret the particular scope of practice for nurses who have been certified in an area of advanced practice. The Attorney General’s Office has in the past advised boards that a California Supreme Court ruling, Tidewater Marine Western, Inc. v. Victoria L. Bradshaw, as Labor Commissioner [(1996) 14 Cal.4<sup>th</sup> 557], has narrowed the instances in which an agency may issue opinions or procedures without adopting them as regulations. Also, there have been instances in which other agencies, other than the BRN, have attempted to pursue regulations or make policy statements regarding the practice of nursing, even though the BRN has sole jurisdiction over the nurses scope of practice, unless otherwise permitted by law. (For example, the Medical Board is permitted under law to consult with the BRN for establishing certain nursing practice requirements.)

**ISSUE #11: (ALLOW FOR ONE-TIME EMERGENCY FUNDING?)** The Board had to suspend actions on disciplinary cases in fiscal year 2000/01 and again in January 2002 because of budget shortfalls.

**Recommendation #11:** *A funding mechanism should be developed to permit the delegation to the Department of Finance of one-time, current year augmentation for a BRN’s Attorney General’s Office (AG) line item. Examples of such mechanisms can be found in the current budget act (Chapter 379, Statutes of 2002) in Budget Control Section 4.40 and 28.50. The BRN would be required to substantiate the public protection need for funding, and show that the funding, shortfall was not foreseeable and could not be addressed through the regular budget process. A cap could be placed on the maximum allowable, one-time augmentation and requests above the cap would require notification of the Legislature. Such an emergency mechanism could avoid restrictions on AG work due to an unforeseeable budget shortfall. It would provide oversight by a control agency and would be limited in duration and amount.*

**Comments:** There was a budget shortfall in fiscal year 2000/01 due to the increased number of cases transmitted to the AG's Office and a backlog of cases pending at the AG's Office. Consequently, in April 2001, the Board suspended action on all cases pending at the AG's Office, except those cases involving patient death, crimes of violence, sexual assault, or other acts that would pose a direct threat to patient safety. The same actions were taken in January 2002, due to a budget shortfall. A Budget Change Proposal was submitted for enforcement costs in spring 2001. The fiscal year 2001/02 component was denied, and the 2002/03 component was approved on a two-year limited-term basis.

**ISSUE #12: (PREVENT BUDGET SHORTFALL?)** The Board projects that it will incur a deficit in its budget by fiscal year 2004/05, unless the Board begins to receive part of the payment on the loan made to the general fund.

**Recommendation #12:** *The Board should work in conjunction with the Department of Consumer Affairs Budget Office and the Department of Finance to assure that its fund condition will be sufficient to reconcile any deficit that may be created by the loan to the General Fund.*

**Comments:** The statutory reserve fund limit for the Board is 24 months (B&P Code Section 128.5). The Board has maintained a prudent reserve to meet future potential cost increases, address unforeseen contingencies, and bridge the gap between expenditures and unexpected declines in revenues. However, it is projected that the current fund reserve (13.8 months) will dramatically decline within fiscal year 2002/03 because the Board made a \$12 million loan to the General Fund to assist in offsetting the General Fund shortfall. The Board will work in conjunction with the Department of Consumer Affairs Budget Office and the Department of Finance to closely monitor the Board's fund condition. The Board does not plan to raise fees unless there are no other alternatives to reconcile any deficit created by the loan to the General Fund.

**ISSUE #13: (BRN CONTINUE EFFORTS TO DEAL WITH NURSING SHORTAGE?)** California is experiencing and will continue to experience a critical shortage of registered nurses.

**Recommendation #13:** *The BRN should continue to work with the Chancellor of the California Community Colleges, the Chancellor of the California State University, the President of the University of California, and the President of the Association of Independent Colleges to reform the educational system to increase student access and shorten the time for completion of nursing programs. Prerequisite and co-requisite courses should be standardized and course requirements for nursing curricula should be aligned. (AB 2314 (Thomson) Chapter 1093, Statutes 2002) requires nursing education reform that should result in students completing their education in a more efficient manner and reasonable timeframe. The BRN should be actively involved in the implementation of the statute.*

**Comments:** As stated by the Board, the well-documented and publicized shortage of registered nurses in the workforce is the most critical issue impacting nursing. It is projected that

California will need approximately 67,500 more registered nurses by 2006, and that we are rapidly approaching a shortfall of 25,000 nurses to meet the current health care needs of Californians. As explained by the Board, such a shortfall will create a public health crisis, place consumers at risk, and have a crippling effect on healthcare delivery. The Board indicates that it has been at the forefront of researching and strategizing to resolve the issue. Board efforts include: identification and elimination of barriers to licensing; approval of new pre-licensure nursing programs; and active involvement with the Governor's Nurse Workforce Initiative. Barriers to resolution of the current and prevention of future shortages include the limited availability of current registered nurse data and a pre-licensure nursing education system that, in some instances, impedes rapid student matriculation.

**ISSUE #14: (BROADEN THE BRN'S FUNDING FOR NURSING STUDENTS AND PROGRAMS?) Funding for the BRN's scholarship and loan repayment program could possibly be increased and be broadened to include funding of nursing educational programs where lack of funding exists.**

***Recommendation #14: The Board should work with the JLSRC and the Department to consider increasing the assessment for the scholarship and loan repayment program by \$5.00 and to also allow expenditure of those funds for expansion of pre-licensure nursing programs where needed.***

**Comments:** All pre-licensure nursing programs submit a completed Annual Report Survey (Survey) each fall. The Survey completed for 2001 (August 1, 2001 to July 31, 2002) shows that for all types of pre-licensure programs there were about 10,000 qualified applications received. This, however, was a decline of more than 3,000 applicants from the prior 2000 Survey. The number of admission slots filled were about 6,200. The total number of graduates from all pre-licensure programs was about 5,200 in 2001. The number of graduates seems to have remained rather constant for almost the past eight years. This clearly indicates that the current number of programs are unable to accommodate the number of qualified students who are applying and that there has been no substantial increase in the number of students graduating from approved programs.

Registered nurses currently pay a \$5.00 assessment with their license renewal fees to support a scholarship and loan repayment program. The program's focus is to increase the number of registered nurses working in medically underserved areas and to increase the number of registered nurses from underrepresented ethnic groups. There has been some discussion with the profession about increasing this assessment by \$5.00 to allow for more grants and scholarships and to fund pre-licensure nursing programs where needed.

**ISSUE #15: (DEFINE "ADVANCED PRACTICE NURSE?") Should a separate statutory definition for "advanced practice nurse" be created?**

***Recommendation #15: A separate statutory definition for "advanced practice nurse" should be created.***

**Comments:** Nationally, the term “advanced practice nurse” refers to four categories of registered nurses with education and expertise beyond basic registered nurse education. The four categories are nurse anesthetists, nurse-midwives, nurse practitioners, and clinical nurse specialists. In discussions with the public, consumer groups, other professional organizations, and the legislature, the phrase “advanced practice nursing” helps identify these groups of certificated nurses and helps identify their special expertise and knowledge, as stated by the Board. In this era of healthcare reform, the Board is finding increasing need to be able to identify these categories of registered nurses with advanced skills and knowledge through one phrase, and to protect this phrase from misappropriation by individuals who do not understand that the advanced practice nurse is a registered nurse with advanced training. Once this phrase is defined in statute, the Board indicates that it would be able to consolidate some of the advanced practice regulations under this over-riding phrase, rather than individually changing each body of regulations for each category of advanced practice nursing.

**ISSUE #16: (IMPROVE THE BRN APPROVAL PROCESS FOR NURSING SCHOOLS?)** There is some potential for improving BRN’s approval process for pre-licensure nursing programs and thereby streamlining and facilitating the approval of programs.

**Recommendation #16:** *The BRN should continue looking for ways to identify strategies to enhance or streamline the nursing program approval process. Also, the BRN’s Education Advisory Committee should explore acceptance of the National League for Nursing (NLN) or Commission on Collegiate Nursing Education (CCNE) accreditation and determine if this accreditation could substitute for BRN approval.*

**Comments:** The BRN points out that it makes every effort to expedite the initial approval process and has not yet identified any strategies to enhance or streamline the nursing program approval process, but is constantly evaluating ways of achieving this goal. The most common barriers identified by organizations interested in starting new programs and existing programs are cost-related, e.g., resources, number of faculty, etc. Clinical placements for student and lack of available nursing faculty are additional barriers. The BRN argues that these barriers do not fall within its purview; however, it has supported legislation to increase funding to nursing programs to address cost-related barriers.

The BRN also indicates that its approval process for nursing programs is evaluated on an ongoing basis to determine if it can be accomplished in a more effective and expeditious manner. Acceptance of NLN and CCNE accreditation is being explored by the BRN. As indicated, one of the primary charges to the BRN’s Education Advisory Committee is to research the matter and to identify criteria that would generate a BRN approval visit of NLN or CCNE accredited programs. However, the BRN indicates that since its approval for prelicensure nursing programs is “mandatory” it is not possible for a program to operate based solely on NLN or CCNE accreditation. This raises the issue of whether the BRN should still have to approve accredited programs and for what purpose.